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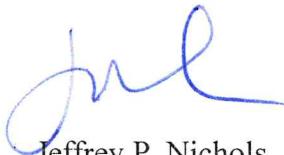
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: **DOCKET NO. 500** – ARX Wireless Infrastructure, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1061-1063 Boston Post Road, Milford, Connecticut

Dear Council:

Enclosed please find an original and 15 copies of City of Milford's Post-Hearing Brief and Proposed Findings of Fact, with an accompanying Appendix of Unpublished Decisions, in connection with the above-referenced application.

Very truly yours,



Jeffrey P. Nichols

JPN/gmv
Enclosures

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: : DOCKET NO. 500

ARX WIRELESS INFRASTRUCTURE, LLC :
APPLICATION FOR A CERTIFICATE OF :
ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE CONSTRUCTION, :
MAINTENANCE AND OPERATION OF A :
WIRELESS TELECOMMUNICATIONS :
FACILITY LOCATED AT 1061-1063 :
BOSTON POST ROAD, MILFORD, : August 26, 2021
CONNECTICUT

CITY OF MILFORD'S POST-HEARING BRIEF
WITH PROPOSED FINDINGS OF FACT

I. INTRODUCTION

Pursuant to Conn. State Regs. § 16-50j-31, the City of Milford (“City”) respectfully submits this post-hearing brief with proposed findings of fact. The City opposes the application of ARX Wireless for permission to construct a telecommunications tower at 1063 Boston Post Road in Milford, Connecticut. As addressed below, the Application fails to satisfy two fundamental prerequisites: there is no present public need for the proposed tower, and there are site-specific adverse effects on a residential neighborhood that are avoidable. Furthermore, the Applicant has failed to develop an adequate record to permit the Council to make a fully informed decision on the best available solution for the public.

No present public need. First, the Applicant has failed to demonstrate an existing public need, which is the most fundamental requirement. *See* General Statutes § 16-560p(a)(3)(A).¹

¹ General Statutes § 16-50p(a)(3)(A) provides, in relevant part: “The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine . . . a public need for the facility and the basis of the need.”

The Applicant proposes to construct a tower to fill a wireless coverage gap that does not exist.

(*Proposed Finding of Fact (“PFOF”) 3 below.*) The putative coverage area is already being served by an Existing Facility at 1052 Boston Post Road, and the Applicant and carrier-intervenors all admit that the proposed tower would provide “replacement coverage,” potentially with some additional bells and whistles. (*PFOF 4.*) In fact, the carriers’ intention was always to find a spot for an expanded, tower-based facility at the Current Site, where they maintain lease rights for the foreseeable future. (*PFOF 5-6.*) The idea of moving to the Proposed Site originated as a business opportunity for the Applicant, who then brought it to the carriers, and the Applicant has been singularly focused on pushing the Proposed Site forward – to the exclusion of all other options – because that is the only scenario in which the Applicant is certain to profit. (*PFOF 5, 44.*) In other words, the Applicant’s proposal is a solution in search of a problem.

Adverse effects on numerous residences are not unavoidable. Second, even assuming the existence of some present public need for a new tower in the area, the Applicant has failed to demonstrate that it is necessary to build a 116-foot tower specifically at the Proposed Site, cheek-to-jowl with numerous single-family homes in the Home Acres Avenue neighborhood, where it would cause substantial visual impacts and degradation of the character of the neighborhood. The Applicant contends that the Proposed Site is the only available location that can meet coverage objectives (*Hrg. Tr. Coppins 68:7-8*); however, that is both factually untrue and contrary to the evidence. The Existing Facility at 1052 Boston Post Road – which is already in operation as the primary site² – will continue to serve the putative coverage area for the

² The City respectfully submits that the Council should not fall into the trap of referring to 1052 Boston Post Road, the Current Site, as an “alternative.” Instead, as one Council member recognized in his questioning during the July 27, 2021 hearing, the Current Site is already in operation as the primary site, and it is the Proposed Site that is an alternative to what already exists. (*Hrg. Tr. 198:16-19* (“*So prior to that [being approached by ARX], you [AT&T] had not*

foreseeable future. The carriers' lease rights at the Current Site extend through 2024, and the Current Site may be available to host a replacement solution at such time as the Existing Facility is eventually retired. (*PFOF 5, 34, 46.*) The Applicant also has failed to credibly investigate or disprove the availability of properties at a greater distance from residential neighborhoods, including the Connecticut Post Mall property at 1201 Boston Post Road ("Mall property") or the 10 Leighton Road site ("Schick property"), both of which have expressed interest in hosting a tower. (*PFOF 35, 36, 47, 48.*)

In light of this record, the Application should be denied because it will create adverse effects on residential neighbors that are unnecessary and avoidable. *See General Statutes § 16-50p(b)(1)* ("The council may deny an application for a certificate if it determines that . . . (iii) the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location."). Moreover, the Applicant's insincere "investigation" of other potential locations, coupled with its pattern of omissions and last-minute maneuvers during this process, should give the Council serious pause. The paramount purpose of the statutes and regulations governing the field of public utilities is to promote "the welfare and protection of the people of the state." *See Conn. Gen. Stat. § 16-50g.* As a business seeking to participate in this regulatory framework, the Applicant was obligated to help the Council find the best available solution for the public. *See Conn. Gen. Stat. §§ 16-50l, 16-50p.* However, the Applicant has prioritized its own interests over the public interest, and has hindered the Council's ability to identify the best available solution, by refusing to provide a full record on alternative solutions.

been evaluating alternative sites yourself, you were either waiting to hear what might transpire at the current site?" (emphasis added).)

The simple fact is that there is no urgency for the Council to rush into a bad result. If the Application is denied, the coverage area will continue to be served by the Existing Facility, and a suitable replacement can be developed away from a residential neighborhood. *See, e.g.*, Opinion, Siting Council Dkt. No. 347 (700 Kent Road, New Milford) (May 22, 2008) (“Although a more thorough examination of other possible strategies may yet determine that the site proposed by [the applicant] in this proceeding is indeed the most prudent and feasible, the Council would prefer to base such a determination on a wider evaluation of available alternatives.”); Opinion, Siting Council Dkt. No. 269 (80 Old Post Road, North Branford) (Aug. 12, 2004) (“We encourage the applicant to explore other alternative sites in the area, including renewed efforts to contact property owners who did not respond to the applicant's initial contacts, and a concerted effort to find another site with less visual impact on residents.”). Meanwhile, the Council is not bound to approve something just because an application was filed, nor is the Applicant's commercial betterment a relevant consideration in the § 16-50p analysis. For these reasons, the City respectfully submits that the Application be denied without prejudice to considering a more suitable replacement solution for the currently adequate coverage after all local options are genuinely vetted.

II. PROPOSED FINDINGS OF FACT

1. **There is no present public need for construction of a new telecommunications tower in the area of the Proposed Site.**
2. An existing telecommunications facility (“Existing Facility”) at 1052 Boston Post Road (“Current Site”) in Milford is currently serving the putative coverage area. (*Verizon Resp. to CSC Req. 6-7 [Verizon III-B-2]; AT&T Resp. to City Req. 1 [AT&T IV-B-3]; AT&T Resp. to City Req. 8-9 [AT&T IV-B-5].*)

3. There is no existing wireless coverage gap. (See *Existing Conditions Maps attached to Verizon Resp. to City Req. 4 [Verizon III-B-3] and App. Ex. E [ARX II-B-1(e)] at 11 (re: AT&T).*)

- a. The gap depicted in the “without” maps is hypothetical. (See App. Ex. E [ARX II-B-1(e)] at 12 (AT&T), 18-20 (Verizon).)
- b. The Applicant testified: “It is not ARX’s understanding that there’s a gap in coverage. It is our understanding that there is an existing site that needs to be replaced.” (Hrg. Tr. Coppins 69:18-22.)

4. The Proposed Tower would provide “replacement coverage” for the Existing Facility. (App. [ARX II-B-1] at 16-17; Verizon Resp. to CSC Req. 6-7 [Verizon III-B-2]; AT&T Resp. to City Req. 9 [AT&T IV-B-5].) Verizon also hoped to replace the Existing Facility with a bigger structure to accommodate antennas for additional frequencies. (Hrg. Tr. Befera 111:7-18.)

5. The carriers were intending to rebuild at the Current Site, and did not seek out a new site. Instead, the Applicant, a wireless infrastructure developer (App. [ARX II-B-1] at 2), saw a business opportunity and suggested the idea of moving to the site where the Applicant had building rights. As Verizon testified: “[I]t was kind of out of the blue [that ARX suggested the Proposed Site]. I didn’t – we [Verizon] weren’t putting out feelers because we remained hopeful that our existing landlords would still want to accommodate us.” (Hrg. Tr. Befera 178:18-22; *see also related testimony quoted in footnote 3 below.*)³

³ “[I]n this particular instance, you know, we [ARX] . . . did a thorough site search based on the city’s – you know, I relied on the city’s [zoning card] information, and I found a landowner.” (Hrg. Tr. Coppins 67:18-22.)

6. The carriers do not have to vacate the Current Site. (*Hrg. Tr. Befera 154:14-155:10.*)⁴

“[The Proposed Site] was the only site that I [ARX] brought before them [the carriers] and it met their coverage objective. 1063 Boston Post Road is the site that we brought before them.” (*Hrg. Tr. Coppins 70:5-8.*)

“And then this application came along, and we [Verizon] were contacted by Arx about it.” (*Hrg. Tr. Befera 155:11-12.*)

“We [Verizon] were approached by Arx about this opportunity, you know, and it worked for us, . . . but we didn’t ask them to build this tower for us. They came to us with it proposed.” (*Hrg. Tr. Befera 173:23-174:2*)

“[W]e [Verizon] were looking into putting a tower on the hotel property. That was the project we were pursuing. We were approached by Arx about this proposed tower that they said AT&T was going on.” (*Hrg. Tr. Befera 174:10-14.*)

“[J]ust to correct you on the direction of communication, it was similar to Verizon. It was Arx that approached AT&T and asked if that [Proposed Site] location would potentially work for us.” (*Hrg. Tr. M. Roberts 198:10-15.*)

“MR. MORISSETTE: Have you [AT&T] been approached or have you approached any other developers for towers in the area? THE WITNESS (M. Roberts): No, I have not.” (*Hrg. Tr. M. Roberts 205:20-24.*)

“Obviously, we’ve [AT&T] been in conversations with them [landlord at Current Site]. They had indicated, as Verizon testified, that they had thoughts about allowing a tower on their property, but outside of that, no tower developers have approached us.” (*Hrg. Tr. M. Roberts 207:13-18.*)

“So I [ARX] started looking, and, you know, I talked to Mr. Roberts, Mark Roberts from AT&T, the site acq, and talked to him about it. This is about the time I was getting my lease in place. And I also sent an email to Mr. Befera [Verizon] right around the same time. And again, both parties said, man, this would be a welcome site for us because we’re not moving forward with this one. So that’s how I started pushing forward with this.” (*Hrg. Tr. Coppins 240:14-22.*)

⁴ Verizon’s principal engineer testified:

We [Verizon] do have rights in our lease that could potentially prevent them [Current Site owners] from tearing the hotel down prior to 2024, I believe, the beginning of 2024, that we could certainly press if they come around and say they’re going to tear the hotel down sooner, which is something that we’re trying to prevent having that type of interaction play out by replacing the facility now because we don’t want to impede their livelihood or their progression and development of that parcel. We want to be a good tenant.

- a. Pursuant to its lease (“Verizon Lease”) (*Attach. 1 to Verizon Resp. to CSC Req. 8 [Verizon III-B-2]*), Verizon’s current term does not expire until December 31, 2024. (*See Verizon Resp. to City Req. 15b [Verizon III-B-6]; Hrg. Tr. Befera 154:14-155:10.*)
- b. Pursuant to its separate lease, AT&T would have at least 12 months’ advance notice before having to vacate. (*Hrg. Tr. M. Roberts 198:22-199:1.*)⁵
- c. The Verizon Lease will automatically renew on December 31, 2024, and every five years thereafter, unless there is an affirmative notice of cancellation by Verizon or the Lessor. (*See Verizon Lease § 5 [Verizon III-B-2]; Hrg. Tr. Befera 177:13-22.*)
- d. There has been no notice of cancellation of the Verizon Lease. (*Verizon Resp. to City Req. 15e [Verizon III-B-6].*)
- e. Before it was approached by the Applicant, Verizon was pursuing a replacement facility at the Current Site in conjunction with the redevelopment there. (*Hrg. Tr. Befera 174:10-14 (“[W]e [Verizon] were looking into putting a tower on the hotel property. That was the project we were pursuing. We*

But we’ve tried to move forward with them with both a location for the temporary tower and we’ve had discussions with them about a permanent tower. And what happened over there, I’m told, is that the main guy that runs the show over there got sick, had a heart attack or something, and the folks that we’re dealing with now, they don’t seem to be able to make a decision of any sort that allows us to feel like we’re moving forward with anything. So it’s an unfortunate situation.

(Hrg. Tr. Befera 154:14-155:10.)

⁵ There were two witnesses with the surname “Roberts.” Douglas Roberts (herein “D. Roberts”) testified for the Applicant, and Mark Roberts (herein “M. Roberts”) testified for AT&T.

were approached by Arx about this proposed tower that they said AT&T was going on.”.)

- f. There recently was a “For Sale” sign posted at the Current Site. (*Ex. 12 to ARX Resp. to City Req. 12 [ARX II-B-11].*) If the Current Site is sold, the new owner will assume the Lease obligations, and Verizon will retain all its Lease rights. (*See Verizon Lease § 13 [Verizon III-B-2].*)
- g. In the event of redevelopment, the landowner must attempt to cooperatively relocate the Existing Facility within the Current Site parcel. (*Verizon Lease § 32 [Verizon III-B-2].*)

7. Any assertions as to when/how the Current Site might be redeveloped are speculative. Since the former hotel structures were removed, there is no evidence of any actual redevelopment plan. (*See Hrg. Tr. Befera 154:14-155:10 quoted in fn. 4 above; see also D. Roberts 199:8-9 ([U]ltimately [the Current Site owners’] development plans didn’t come to fruition.”); Coppins 34:15-19 (“The hotel stopped construction. It has since been put up for sale. There has been no indication that the hotel is going to go forward, and the old hotel is being demolished.”).*)

8. **Locating a telecommunications tower at 1063 Boston Post Road, specifically, would create adverse effects for residents of the Home Acres Avenue neighborhood.**

9. The Application proposed to construct a 116-foot tower at the rear of 1063 Boston Post Road (“Proposed Site”) in Milford. (*App. [ARX II-B-1] Ex. G Site Plan.*)

10. The Proposed Site is on a 2.44-acre parcel. (*App. [ARX II-B-1] at 1.*)

11. The Proposed Site is only 170 feet from a single-family home in the Home Acres Avenue neighborhood. There are six houses within 300 feet, and ten houses within 452 feet.

(Ex. 7 to ARX Resp. to City Req. 7 [ARX II-B-11].)

12. As a frame of reference, one-tenth of a mile is 528 feet.

13. At the October 1, 2020 meeting with the Applicant, the City objected to constructing a tower in such close proximity to these houses. *(Ball Ltr. 10/8/20, App Ex. M at 7.)*

14. The Milford legislative delegation also has objected to building a tower so close to neighborhood houses. *(Milford Leg. Deleg. Comments 5/4/21).*

15. The City submitted its location preferences pursuant to General Statutes § 16-50gg. *(Municipal Comments 4/28/21.)*

16. The 1063 Boston Post Road property is split-zoned. The front half is in the Interchange Commercial District (“ICD”), and the rear half is zoned R-12.5 One-Family Residential. *(ARX Supp. to Section VII(C) of App. Narrative [ARX II-B-4].)*

17. The Proposed Site is in the Residential zone. *(ARX Supp. to Section VII(C) of App. Narrative [ARX II-B-4].)*

18. The Proposed Tower would not comply with Milford Zoning Regulations regarding towers. *(See ARX Supp. to Section VII(C) of App. Narrative [ARX II-B-4]; see also Milford Zoning Regs. §§ 3.1.2, 3.1.2.18 and 3.1.4.1 [ARX II-B-1(b)].)*

19. Furthermore, the “Visual Assessment & Photo-Simulations” submitted with the Application are misleading. The nearest photo taken from the Home Acres Avenue neighborhood was taken from a distance of 0.12 miles, i.e., 634 feet, and there are more than ten houses even closer to the Proposed Site. *(See App. [ARX II-B-1] Ex. H at Photo #3.)*

20. The City identified other properties near the putative coverage area and asked that the Applicant investigate their viability and availability. (*Knuff Ltr. 10/27/20, App. [ARX II-B-1] Ex. M at 9.*)

- a. The City provided emails and phone numbers for relevant persons affiliated with 1052 Boston Post Road (the Current Site) and 1201 Boston Post Road (the Mall property). (*Knuff Ltr. 10/27/20, App. [ARX II-B-1] Ex. M at 9.*)
- b. As detailed below, the Applicant did not genuinely investigate those locations. (*PFOF 33-48.*)

21. The first evidentiary session and the public comment session occurred on June 26, 2021.

22. On July 15, 2021, mid-hearing, the Applicant made a surprise proposal to shift the Proposed Tower within the 1063 Boston Post Road parcel (“Shifted Site”). (*See Sheet C-2 of Ex. 41 to ARX Resp. to CSC Req. 41 [ARX II-B-12].*)

23. The Applicant did not communicate or consult with the City in good faith prior to submitting the mid-hearing change of plan. (*Hrg. Tr. Coppins 254:25-255:11.*)

24. The Shifted Site is only “approximately 105 feet” from the Proposed Site. (*ARX Supp. Prefiled Test. at 4 [ARX II-B-14].*)

25. The base of the shifted tower would be only 12 feet 6 inches across the zoning district line into the ICD portion of the 1063 Boston Post Road property. (*See Sheet C-2 of Ex. 41 to ARX Resp. to CSC Req. 41 [ARX II-B-12].*)

26. This mid-hearing change of plan was a tactical attempt to circumvent consideration of local siting criteria. (*See ARX Supp. Prefiled Test. [ARX II-B-14] at 1-2 (“We determined that we could relocate the tower on the site entirely on to the portion of the property*

zoned ICD.); Hrg. Tr. Coppins 241:19-242:3 (“We have now moved it out of the – the tower out of the residential zone . . .”), D. Roberts 251:9-13 (“By moving the tower into the ICD zone . . .”.)

27. The Shifted Site would provide no operational advantages over the Proposed Site. (*Hrg. Tr. Cheiban 152:2-6 (no “material difference to our coverage”), Cheiban 158:15-159:11 (“equivalent as far as Verizon is concerned”), Coppins/D. Roberts 236:13-237:25 (listing configuration differences), Coppins/D. Roberts 243:21-244:11 (effect on parking spots), D. Roberts 250:15-17 (listing configuration differences); see also ARX Supp. Prefiled Test. [ARX II-B-14] at 1-2.)*

28. The Shifted Site proposal does not redress the City’s objections or materially resolve the adverse impacts on the neighborhood that the Proposed Tower would cause.

- a. The City, the Milford Legislative Delegation, and the residents of the Home Acres Avenue neighborhood have each objected that the Proposed Tower would adversely affect the scenic quality and residential character of the neighborhood. (*See Municipal Comments 4/28/21; Milford Leg. Deleg. Comments 5/4/21; Hrg. Tr. Rep. Kennedy 130:10-23; Hrg. Tr. Richards 131:18-132:2.*)
- b. In the Shifted Site proposal, the tower would still be only 275 feet from the nearest single-family home, less than 400 feet from six houses, less than 500 feet from ten houses (including house number 55), and less than one-tenth of a

mile from twelve houses. (Ex. 40 to ARX Resp. to CSC Req. 40 [ARX II-B-12].)⁶

- c. The Applicant admits that the overall viewshed and visibility would be similar to those of the Proposed Site. (See ARX Supp. Prefiled Test. [ARX II-B-14] at 3.)

29. Due to the Applicant's mid-hearing proposal change, the Applicant has provided hasty and less-thorough constructions plans and visibility analyses, which hinders the Council's ability to scrutinize the Shifted Site proposal. (See *substitute site plans at Ex. 40-41 to ARX Resp. to CSC Req. 40-41 [ARX II-B-12]; and substitute visibility analysis attached to ARX Supp. Prefiled Test [ARX II-B-14]*; see also Hrg. Tr. Gaudet 257:14-17 ("Obviously, with this being in the middle in between the two hearings, we don't have that opportunity to get leaf-off conditions for the set that was filed here.").)

30. The Applicant's "Photographic Documentation & Simulations" of the Shifted Site proposal have little weight. (See *Attach. to ARX Supp. Prefiled Test [ARX II-B-14]*.)

- a. The new visual simulations depict summer conditions with dense leaf coverage. (*Id.*) However, during the six leafless months every year, the proposed tower would be distinctly visible to neighborhood residents. (Hrg. Tr. Gaudet 257:12-258:3.)

⁶ When depicting distances to the nearest houses from the Shifted Site, the Applicant failed to disclose the distance from the Shifted Site to house numbers 55 and 62, which are both less than one-tenth of a mile from the Shifted Site. (See Ex. 40 to ARX Resp. to CSC Req. 40 [ARX II-B-12].)

- b. The Applicant did not depict “leaf-off” conditions because it was rushing to change the proposal in the middle of the hearing. (*Hrg. Tr. Gaudet 257:14-17.*)
- c. The closest photos (#3 and #4) are at a distance of 0.12 miles from the Shifted Site, and there are well over ten houses even closer to the Proposed Site. (*See Attach. to ARX Supp. Prefiled Test [ARX II-B-14] at Photos #3-4.*)

31. Due to the Applicant’s sudden change of plan after the public comment session, the public has been deprived of the ability to provide input on whether the Shifted Site provides any material redress to their reasonable concerns. (*Hrg. Tr. Coppins/Gaudet 254:2-24 (“I have not had any conversations [with neighbors]. I did not run into anybody when I was out there when we were doing the balloon test early in July, so no conversations.”)*)

32. The City’s position is that the Shifted Site proposal does not materially resolve its objections to siting a tower in such close proximity to a residential neighborhood where the Applicant has not investigated more suitable locations exhaustively and in good faith. (*Hrg. Tr. Nichols 256:6-13.*)

33. **Other viable and available locations exist that would avert the detrimental impacts to which the City and its residents are objecting.**

34. Given that the carriers are entitled to operate the Existing Facility at 1052 Boston Post Road for the foreseeable future, it is both viable and available.

- a. The Existing Facility is presently serving the putative coverage area. (*Verizon Resp. to City Req. 11 [Verizon III-B-6]; AT&T Resp. to City Req. 8 [AT&T IV-B-5].*)

- b. The carriers did not seek to move – the idea was suggested to them by the Applicant, who has a business opportunity at the Proposed Site (only). (See *FOF 5, and various testimony in footnote 3, above.*)
- c. The Current Site is viable from a coverage perspective. (*Verizon Resp. to City Req. 12(a) [Verizon III-B-6]; Hrg. Tr. Lavin (AT&T) 209:19-24 (current site is feasible “[f]rom an RF standpoint”).*)
- d. There is no exigent need for the carriers to move, nor is it foreseeable whether any eventual redevelopment of the Current Site will require the carriers to move. (*See PFOF 4-6 above; see also AT&T Resp. to City Req. 10 [AT&T IV-B-5] (“Current operation of this [existing] facility [at 1052 Post Road] evidences that it can coexist with the current site at 434 Boston Post Road and all the other existing AT&T sites.”); Hrg. Tr. M. Roberts 207:13-18. “Obviously, we’ve [AT&T] been in conversations with them [landlord at Current Site]. They had indicated, as Verizon testified, that they had thoughts about allowing a tower on their property, but outside of that, no tower developers have approached us.”.*)

35. The Connecticut Post Mall property at 1201 Boston Post Road is another viable and available site.

- a. The Mall has expressed interest in hosting a telecommunications tower through its wireless infrastructure partner, American Tower. (*Leverone Email 10/23/20 in App. [ARX II-B-1] Ex. M at 13.*)

- b. A tower at the southwest end of the Mall property would not be near any single-family residential neighborhoods. (*See City of Milford GIS mapping on publicly available government website.*)
- c. Verizon recently reached out to American Tower, utilizing contact information that the Applicant refused to use. American Tower confirmed that it had obtained building rights for a tower on the Mall property. (*Hrg. Tr. Befera 180:13-181:6.*)
- d. Verizon has expressly confirmed that its coverage objectives could be met by placement of a tower at the Mall property. (*Verizon Resp. to City Req. 12 [Verizon III-B-6]* (“*Yes at an antenna height of 130 feet AGL.*”).)
- e. Verizon expressly confirmed that it could reconfigure antennas to optimize the coverage area and avoid overlap with existing cell sites. (*Verizon Resp. to City Req. 13 [Verizon III-B-6].*)
- f. Neither ARX nor AT&T has utilized the contact information for American Tower provided by the City to inquire about locating a tower at the Mall property. (*Hrg. Tr. Coppins 75:1-2* (“*And I [ARX] would not and still wouldn’t contact American Tower to do a tower on the property . . .*”), *M. Roberts 205:20-24* (“*MR. MORISSETTE: Have you [AT&T] been approached or have you approached any other developers for towers in the area? THE WITNESS (M. Roberts): No, I have not.*”).)
- g. Although AT&T contends that a tower at the Mall property would not meet its coverage needs, the contention is not credible or supported by reliable evidence.

h. AT&T's responses to the Council's Interrogatories 8 and 27, and the City's Interrogatories 9 and 10, were inconsistent and not forthright. (*See AT&T Resp. to CSC Req. 8 and City Req. 9-10 [AT&T IV-B-2]; see Hrg. Tr. 208:13-216:17.*) Although AT&T responded – and then testified – that it could not confirm coverage viability without specific coordinates (*see AT&T Resp. to CSC Req. 8 [AT&T IV-B-2]* (“*coordinates for a specific tower site location are required for Analysis*”); *see also Hrg. Tr. Lavin 211:4-2122* (“*there's no point in analyzing a location when the response may not apply to anything the landlord would allow us to build*”)), AT&T then proceeded to assert that a tower at the Mall was not viable for coverage based on a purported coverage analysis of a hypothetical tower at the Mall property (*see Attach. I to AT&T Resp. to CSC Req. 27 [AT&T IV-B-4].*)

i. The purported coverage model submitted by AT&T is materially unreliable. It did not include coordinates, nor explain what azimuths (i.e., broadcast direction) of the hypothetical antennas it purported to depict, so it is impossible to decipher whether the model attempted to optimize coverage toward the putative coverage area to the southwest. (*Hrg. Tr. Lavin 212:14-214:23.*)

j. Even more tellingly, the AT&T model (*Attach. I to AT&T Resp. to CSC Req. 27 [AT&T IV-B-4]*) used a hypothetical antenna height of 100 feet (*see Hrg. Tr. Lavin 215:12-16.*), which is lower than any other putative tower height discussed at any point in these proceedings, including the 116-foot Proposed

Tower. AT&T admitted that the coverage would grow if a higher simulated height were used. (*Id. at 215:17-22.*)

36. The Schick property at 10 Leighton Road is a viable and potentially available site.

- a. Verizon has expressly confirmed that its coverage objectives could be met by placement of a tower at the Mall property. (*Verizon Resp. to City Req. 12 [Verizon III-B-6].*)
- b. AT&T twice gave nonresponsive answers to the Council's questions regarding coverage viability for a tower at the Schick site. (*AT&T Resp. to CSC Req. 7 [AT&T IV-B-2]* ("coordinates for a specific tower site location are required for analysis"); *Hrg. Tr. Lavin 201:21-202:1* ("We can certainly look at that.").) AT&T also gave a nonresponsive answer to the City's requests for the same information. (*AT&T Resp. to City Req. 9 [AT&T IV-B-5]; Hrg. Tr. 218:11-12* ("We could investigate a tower there separately.").)
- c. The hypothetical model for the Schick site that AT&T did submit depicts only a billboard antenna at a low elevation, and not a potential tower. (*Attach. 2 to AT&T Resp. to CSC Req. 28 [AT&T IV-B-4].*)⁷
- d. Schick's real estate agent affirmatively reached out to the Applicant to express interest in a tower. (*Bealke Email 10/20/20 at ARX Supp. Resp. to City Req. 19 [ARX II-B-15].*)
- e. As laid out below, Schick's stated reason for ending this pursuit ("noise" in the community) was based on a misapprehension of local stakeholders' views

⁷ Attachment 2 indicates that AT&T modeled an antenna height of 100 feet AGL, but AT&T clarified that the hypothetical height actually was 45 feet AGL. (*Hrg. Tr. Lavin 217:24-218:5*

expressed in this proceeding, and the Applicant evidently failed to correct Schick's misapprehension. (*See PFOF 48.*)

37. The Applicant's purported investigation of other available locations was not sincere or credible.

38. In its pre-filed testimony, the Applicant asserted that the site search process followed this sequence: (1) gauging local interest, (2) taking into account the carriers' coverage needs, (3) consulting with the City, (4) reaching out to properties identified by the City, (5) even if owners did not respond, working with carriers to identify "the optimum site for their coverage needs." (*Coppins Prefiled Test. [ARX II-B-7] at 6.*)

39. However, during live testimony, the Applicant admitted – and Verizon and AT&T confirmed – that the actual process was as follows: (1) on its own initiative, ARX scouted business opportunities near to the Current Site, (2) without talking to the carriers, ARX procured a lease to build at the Proposed Site, (3) ARX then presented the Proposed Site (and no other options) to the carriers, (4) the carriers confirmed that the Proposed Site would suit their coverage needs. In the Applicant's words:

MR. EDELSON: Okay. And the scenario here, the story of what's happened here with the Howard Johnson's site and your involvement, I realize I think I lost the thread here. How did Arx become aware that there was a problem in the area and there might be a need for a new tower?

THE WITNESS (Coppins): So I've been in Connecticut for quite a few years. I remember the original Howard Johnson's site going up when I was working with AT&T, well, SNET at the time. And I became aware, I probably was talking with Mr. Roberts who was intimately involved with the site at one point in time as well with a previous employer, and Mr. Roberts had said maybe you ought to look and talk to somebody and see about getting a site going there, we know that Howard Johnson's are having some problems with the Howard Johnson site.

So I started looking, and, you know, I talked to Mr. Roberts, Mark Roberts from AT&T, the site acq, and talked to him about it. This is about the time I was

getting my lease in place [at the Proposed Site]. And I also sent an email to Mr. Befera right around the same time. And again, both parties said, man, this would be a welcome site for us because we're not moving forward with this one. So that's how I started pushing forward with this.

(Hrg. Tr. 239:21-240:22.)

The Applicant further testified:

THE WITNESS (Coppins): Unless I have a leased site as a property, a lease area, I don't bring it to the carrier until I have that. And the reason I don't is I don't want to tell the RF department, say hey, listen, I've got this site, and then I've got to go lease it, and it may not ever be leased. I don't work like that.

MR. NICHOLS: So the questions that Council members asked before about coverage at the site, am I correct that the reason you deferred on those questions is because ARX can't say whether any of the sites you looked at potentially could meet the carriers' coverage objectives except for 1063; is that correct?

THE WITNESS (Coppins): I didn't bring them to the carriers, so I couldn't get that answer from them. That's why I deferred the question to the carrier. I know that it works for the carriers on 1063 because I had a lease area, I had a leased site, and I can honestly bring it to the carrier and say, hey, I've got this, what do you think. They gave me their answer and they said they liked it. Verizon said they liked it at 112 feet, and AT&T said they liked it at 100 feet, and it would meet their objectives.

(Hrg. Tr. 83:6-84:5.)

40. Thus, in contrast to its prefilled testimony (*Coppins Prefilled Test. [ARX II-B-7] at 6*), the Applicant:

- a. Never gauged the interest of local residential neighbors, focusing instead solely on commercial landowners and the carriers (Hrg. Tr. *Coppins 67:18-22* (“*[I]n this particular instance, you know, we [ARX] . . . did a thorough site search based on the city's – you know, I relied on the city's [zoning card] information, and I found a landowner.*”); Hrg. Tr. 254:2-24 (“MR. MORISSETTE: So just to be clear, we have no reaction from the

neighborhood as to the alternative shifts in the project site? THE WITNESS (Coppins): That is correct.”);

- b. Did not solicit coverage input from the carriers on any site other than the Proposed Site (*Hrg. Tr. Coppins 70:5-8. (“[The Proposed Site] was the only site that I [ARX] brought before them [the carriers] and it met their coverage objective. 1063 Boston Post Road is the site that we brought before them.”);*
- c. Did not consult with the City in good faith as required by General Statutes § 16-50l(f) (*see PFOF 43*);
- d. Refused to “reach out” to the contact person for the Mall identified by the City (*Hrg. Tr. Coppins 75:1-2 (“And I [ARX] would not and still wouldn’t contact American Tower to do a tower on the property . . .”);*
- e. Never proposed a set of options for the carriers to identify an “optimum” site (*Hrg. Tr. 83:6-84:5*); and
- f. Has, in its own words, been “pushing forward” the Proposed Site (*Hrg. Tr. Coppins 240:14-23*), promoting its own business advantage to the exclusion of all other considerations. (*Hrg. Tr. 83:6-7 (“Unless I have a leased site as a property, a lease area, I don’t bring it to the carrier until I have that.”).*) As the Applicant testified:

THE WITNESS (Coppins): “[A]t the end of the day this was the only one that I had available to us that we could bring forward, and it met [the carriers’] coverage objective.

MR. NICHOLS: When you say “available to us,” Mr. Coppins, do you mean available to ARX?

THE WITNESS (Coppins): Available, yes, to ARX as the applicant, yes.

(Hrg. Tr. Coppins 71:7-14.)

41. On August 26, 2020, the Applicant advised the City of its intent to apply for a certificate to construct a telecommunications tower at the Proposed Site. (*Ball Ltr. 8/26/20, App. [ARX II-B-1] Ex. M at 2-3.*)

42. On October 1, 2020, representatives of the Applicant and the City met virtually. (*Ball Ltr. 10/8/20, App. [ARX II-B-1] Ex. M at 7.*) The City raised its objections to building in such close proximity to a residential neighborhood, and the Applicant represented that it would investigate other locations identified by the City. (*Id. at 8.*)

43. After the City identified other locations, the Applicant failed to respond for five months, and then timed its “response” until just before the Application was filed. This conduct effectively deprived the City of its right to location consultation under General Statutes § 16-50l(f).

a. On October 27, 2020, the City asked the Applicant to investigate 1052 Boston Post Road (the “Current Site”), 1201 Bost Post Road (the “Mall property”), and 10 Leighton Road (the “Schick property”). (*Knuff Ltr. 10/27/20, App. [ARX II-B-1] Ex. M at 9-11.*) The Applicant did not respond.

b. Two months later, on December 30, 2020, the City asked for an update. (*Knuff Email 12/30/20, App. [ARX II-B-1] Ex. M at 14.*) The Applicant did not respond.

c. After another month, on January 20, 2021, the City asked again for an update. (*Knuff Email 1/20/21, App. [ARX II-B-1] Ex. M at 15.*) The Applicant stated that it was working on a response. (*Pires Email 1/20/21, App. [ARX II-B-1] Ex. M at 15.*) But the Applicant did not respond.

d. On March 26, 2021, five months after receiving the City’s input, the Applicant finally responded with the conclusory assertion that the identified sites were not feasible, despite the fact that the Applicant refused to utilize the property owners’ contact information provided by the City. (*Ball Ltr. 3/26/21, App. [ARX II-B-1] Ex. M at 17.*)

e. A mere four days later, the Applicant filed its Application on March 30, 2021.

44. The Applicant has an overriding business motive to “push forward” at 1063 Boston Post Road, which is the only site that it controls. (*Hrg. Tr. Coppins 71:7-14 (admitting that by “available,” the Applicant means “Available . . . to ARX as the applicant, yes”); Hrg. Tr. Coppins 83:6-8 (“Unless I [ARX] have a leased site as a property, a lease area, I don’t bring it to the carrier until I have that.”); (Hrg. Tr. Coppins 83:6-8 (“I don’t consider these [Mall and Old Navy locations] as sites because we [ARX] don’t have a lease”)) (emphasis added); (Hrg. Tr. Coppins 240:16-22) (“This is about the time I was getting my lease in place [at the Proposed Site]. . . . So that’s how I started pushing forward with this.”).*

45. The Current Site self-evidently “available” because the Existing Facility is already operating there.

46. The Applicant also did not credibly support its assertion that the Current Site is “unusable” or “not feasible.” (*See ARX Resp. to City Req. 12(b) [ARX II-B-11].*)

a. On October 27, 2020, the City provided two phone numbers and an email address for the owners at the Current Site, and attached an email expressing the current site owner’s interest in including a replacement telecommunications facility in the redevelopment plans. (*Knuff Ltr. 10/27/20 in App. [ARX II-B-1] Ex. M at 10-12.*)

- b. The Applicant did not respond to the City for five months (*Ball Ltr. 3/26/21, App. [ARX II-B-1] Ex. M at 17.*), which was only four days before it filed the Application.
- c. The Applicant alleged in its March 26, 2021 response letter that there was a “lack of interest” from the Current Site owner; however, the Applicant had not actually tried to call or email the owner using the contact information supplied by the City and, instead, mailed letters. (*ARX Resp. to City Req. 12(b) [ARX II-B-11].*)
- d. It was not until after the City alerted the Council on April 28, 2021 to the Applicant’s failure to utilize the provided contact information (*see Municipal Comments 4/28/21*) that the Applicant finally emailed the site owner (*ARX Resp. to City Req. 12(b) [ARX II-B-11] and Ex. 12 thereto.*) This was seven months after receiving the contact information.
- e. That email discussion confirms that the Current Site owner is interested in including a facility in the site redevelopment, including a potential telecommunications tower. (*Ex. 12 to ARX Resp. to City Req. 12 [ARX II-B-11].*)
- f. The Applicant has mischaracterized its post-Application email exchange with the Current Site owner, and continues to inaccurately assert that there is a “lack of interest” (*ARX Resp. to City Req. 12 [ARX II-B-11]*), which is contradicted by the email exchange itself (*see Ex. 12 to ARX Resp. to City Req. 12 [ARX II-B-11].*)

g. Elsewhere, the Applicant inaccurately implies that the owner is exclusively interested in a rooftop facility, not a tower, and then says the site is “unusable” based on that false premise. (*See, e.g., Coppins Prefiled Test. [ARX II-B-7] at 5 (“the proposed new hotel building at the ‘Howard Johnson’s site’ located at 1052 Boston Post Road would not satisfy the coverage needs”)* (*emphasis added*); *ARX Resp. to City Req. 12 [ARX II-B-11]* (“*the new hotel building will not satisfy Verizon’s service objective*”)).

h. The Applicant also relies on the following false premises that have been disproved by the evidence in the record:

- “[T]he site[] located at 1052 Boston Post Road . . . [was] rejected because one or both carriers concluded that their respective service objectives would not be satisfied at [that] location[].” (*ARX Resp. to City Req. 12(a) [ARX II-B-11]*.)
- “Verizon has concluded that there will be no feasible alternative location on that property for the telecommunications equipment, and accordingly, the property at 1052 Boston Post Road has been deemed unusable.” (*ARX Resp. to City Req. 12(b) [ARX II-B-11]*.)

i. These false premises are contradicted by the carriers’ own testimony confirming that they were focused on relocating at the Current Site right up to the moment that the Applicant suggested moving to the Proposed Site. (*Hrg. Tr. Befera 105:12-16 “We [Verizon] have been trying to talk to them [Current Site owners] about doing something permanent towards the west end of the property where the elevation is a little better, but of course, you know, as*

close to [Interstate] 95 as possible because that's where we need it. "); Hrg. Tr. Befera 174:10-14 ("[W]e [Verizon] were looking into putting a tower on the hotel property. That was the project we were pursuing. We were approached by Arx about this proposed tower that they said AT&T was going on. "); Hrg. Tr. M. Roberts 207:13-18. "Obviously, we've [AT&T] been in conversations with them [landlord at Current Site]. They had indicated, as Verizon testified, that they had thoughts about allowing a tower on their property, but outside of that, no tower developers have approached us. ")

- j. Contrary to the Applicant's assertion, the carriers have expressly confirmed the obvious fact that their goal of "replacement coverage" for the Existing Facility could be met by a new facility at the Current Site. (*Verizon Resp. to City Req. 12(a) [Verizon III-B-6]; Hrg. Tr. Lavin (AT&T) 209:19-24 (current site is feasible "[f]rom an RF standpoint")*.)

47. Likewise, with respect to the Mall property at 1201 Boston Post Road, the Applicant did not credibly or reliably support its assertion that there is "a lack of interest from the owner to develop a tower at the property." (*See ARX Resp. to City Req. 12(b) [ARX II-B-11].*)

- a. On October 27, 2020, the City identified American Tower as the Mall's designee for discussing tower siting, and provided an October 20, 2020 email from Christopher Leverone (American Tower) expressly communicating the Mall's interest in hosting a telecommunications tower:

Contrary to the [Applicant's] statement in the Technical Report, CT Post Mall and American Tower are interested in providing Verizon and AT&T (as well as other carriers) the opportunity to locate their antennas on the mall property, either by way of

a tower on the property or on the rooftop/exterior of the mall itself, and will assist any carrier in determining the feasibility of doing so . . .”

(Leverone Email 10/23/20 in App. [ARX II-B-1] Ex. M at 13 (emphasis added).)

- b. However, the Applicant refused to contact American Tower because American Tower is a competitor that likely would be awarded the project over the Applicant. *(Hrg. Tr. Coppins 74:1-8 (“I [ARX] would not have contacted American Tower as they’re a competitor in the tower business. They own towers in Connecticut. They own towers all over the country. I think they’re the largest tower company in the country. So they would have, if there was a tower that they wanted to put on the mall, they would go through the same process that I’m going through right now.”); Hrg. Tr. Coppins 74:24-75:5 (“[The City] didn’t give me [ARX] the owner of record for the mall. He just gave me American Tower. And I would not and still wouldn’t contact American Tower to do a tower on the property because I’m not sure – the owner of record would be the one to give me the rights to lease a property.”).)*
- c. When asserting that the Mall is not available for siting a tower, the Applicant is relying solely on a mailed letter it sent to the property owner entity on October 21, 2020, before the City relayed specific contact information on October 27, which the Applicant has since refused to utilize. *(Hrg. Tr. Coppins 72:22-75:15.)*
- d. Notably, Verizon did utilize the contact information for American Tower provided by the City after the first evidentiary hearing session, and was able to

easily confirm the Mall's interest in hosting a tower. (*Hrg. Tr. Befera 180:19-25* ("I [Verizon] asked him [American Tower] if they had rights to build a tower there [at the Mall], and he came back and said that they did, which I don't know if this is a new development or a new agreement that they've reached with the property owner or not, but we did have that exchange in email.").

e. In light of the evidence that the Mall has interest in hosting a tower, which the Applicant has downplayed and avoided confirming, the following statements by the Applicant are neither credible nor reliable:

- "ARX explored the use of this [Mall] parcel for the development of a new tower, but it was deemed unusable due to a lack of interest from the owner to develop a tower at the property." (*ARX Resp. to City Req. 12(b) [ARX II-B-11]*.)
- "[We] made a continuing effort to explore every possible location" (*Coppins Prefiled Test. [ARX II-B-7]* at 4.)
- "We filed the Application with the Siting Council only after we exhausted these efforts" (*Coppins Prefiled Test. [ARX II-B-7]* at 6.)
- "I still think that our site, based on the information and based on the research that I did with the recommendations of [the City], we located it in the only place that was available." (*Hrg. Tr. Coppins 68:4-8.*)

f. The Applicant did truthfully admit, however, that its site investigation – including at the Mall – was focused not on whether sites are available for a

tower, generally, but whether the owner would do a deal with the Applicant, specifically, rather than another developer:

- “MR. NICHOLS: When you say “available to us,” Mr. Coppins, do you mean available to ARX?”

THE WITNESS (Coppins): Available, yes, to ARX as the applicant, yes.”

(Hrg. Tr. Coppins 70:3-14 (emphasis added).)

- “I [ARX] reached out – [the City] didn’t give me the owner of record for the mall. He just gave me American Tower. And I would not and still wouldn’t contact American Tower to do a tower on the property because I’m not sure – the owner of record would be the one to give me the rights to lease a property.”

(Hrg. Tr. Coppins 74:23-75:5 (emphasis added).)

- “I stand by my testimony that I [ARX] pursued everything, and I contacted every property owner. And I did it in the only way that I know how to do it, by letters, phone calls, and if they don’t respond to any of those, then I do a certified mail. I can’t make somebody lease the property to me. It would make my life a little easier, but again, I did pursue every opportunity.”

(Hrg. Tr. Coppins 76:22-77:4 (emphasis added).)

- “MR. NICHOLS: Has ARX had any discussions with the carriers or anybody else affiliated with the application about reaching out to American Tower at this juncture to determine whether a tower might be sited at the mall property?”

THE WITNESS (Coppins): I mean, again, . . . have them give me a call. We’d be happy to look at it.”

(Hrg. Tr. Coppins 89:15-24 (emphasis added).)

- “I wouldn’t reach out to American Tower. . . . Have them [the Mall] call me [ARX]. I would be happy to talk with them. I’m a developer. I mean, this site, whether it’s this [proposed] site or the other [Mall] site, I don’t really care. As long as it meets

the needs of the carrier and a lease can be done, we're happy to do that.”

(Hrg Tr. Coppins 90:17-21 (emphasis added).)

- “If you guys want a tower sited at the mall, have the mall call me [ARX]. We would be happy to talk with them.”

(Hrg. Tr. Coppins 90:5-8 (emphasis added).)

g. The Applicant’s demand during hearing testimony that the City should somehow cause the Mall to “call” the Applicant merits no weight. It is the Applicant’s burden to ensure the truth of its assertion that the Mall “lacks interest.” Moreover, the Applicant has failed and refused to simply dial the phone number of the Mall’s designee that the City did provide. *(Hrg. Tr. Coppins 75:1-2 (“I [ARX] would not and still wouldn’t contact American Tower to do a tower on the property . . . ”).)*

48. The Applicant has likewise failed to credibly support its assertion that the owners of the Schick site at 10 Leighton Road is “not interested at all in moving forward with any kind of a facility there.” *(See Hrg. Tr. Coppins 236:10-12.)*

- a. On October 20, 2020, Schick’s agent Jake Bealke sent an email expressing interest in hosting a tower. *(Bealke Email 10/20/20 at ARX Supp. Resp. to City Req. 19 [ARX II-B-15].)*
- b. The Applicant did not produce the emails with Schick’s agent until pressed twice to do so. The City served a request on July 13, 2021, seeking the emails, but the Applicant’s July 19, 2021 response did not include them. *(ARX Resp. to City Req. 19 [ARX II-B-13].)* When the City pressed again, the Applicant finally produced emails from October 2020 a day later on July 20,

2021. (*ARX Supp. Resp. to City Req. 19 [ARX II-B-15].*) Then, on July 27,

2021, the morning of the second hearing itself, the Applicant produced two

subsequent emails. (*ARX 2d Supp. Resp. to City Req. 19 [ARX II-B-16].*)

- c. Although the Applicant alleges that, on October 2, 2020, Schick said it was uninterested in a tower due to other planned “expansion” at the property.

(*ARX Resp. to City Req. 12(c) [ARX II-B-11].*) However, as Mr. Edelson

noted at the Hearing (*Hrg Tr. 244:12-245:23*), that allegation is not borne out

by the concurrent emails. (*See ARX Supp. Resp. to City Req. 19 [ARX II-B-*

15].) The July 26, 2021 email from real estate agent Jake Bealke actually

specifies that Schick’s concern in 2021 was “the same reasons as before” in

2020, namely “the noise created in the community with the residents nearby.”

(*Bealke Email 7/26/21 at ARX 2d Supp. Resp. to City Req. 19 [ARX II-B-16].*)

- d. In the emails, the Applicant did not inform Schick’s agent of the material facts that (a) the City would prefer a tower at Schick over the Proposed Site, and (b) the Schick site would be an improvement for neighbors over the Proposed Site because it is substantially less close to residential homes. (*See ARX Supp. Resp. to City Req. 19 [ARX II-B-15]; ARX 2d Supp. Resp. to City Req. 19 [ARX II-B-16].*)

- e. Nor did the Applicant inform Schick’s agent via telephone of those material facts. (*Hrg. Tr. Coppins 258:4-260:1.*)

- f. This factual evidence, as well as the Applicant’s last-minute efforts to clean up the record, demonstrates that the Applicant’s claims regarding the purported Schick investigation are not credible. Schick had interest in a tower

and actually reached out to the Applicant. (*See Bealke Email 10/20/20 at ARX Supp. Resp. to City Req. 19 [ARX II-B-15].*) When Schick evinced a mistaken belief that there would be local opposition (*see Bealke Email 7/26/21 at ARX 2d Supp. Resp. to City Req. 19 [ARX II-B-16]*), the Applicant evidently failed to correct Schick’s misunderstanding.

III. DISCUSSION

A. Legal Standard

When deciding an application for a certificate to build a telecommunications tower, the General Statutes require the Council first to find whether there is a public need for the proposed tower. *See Conn. Gen. Stat. § 16-50p(a)(3)(A)*, which provides: “The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine . . . a public need for the facility and the basis of the need.” The Council presumes a general public need for personal wireless services, and focuses its analysis on whether there is a “specific need for [the] proposed facility.” Conn. Gen. Stat. § § 16-50p(b)(1). Next, the Council weighs any public need against the adverse environmental effects, which include adverse effects on scenic values. Conn. Gen. Stat. § 16-50p(a)(3)(B). When weighing the need for a telecommunications tower, specifically, “[t]he council may deny an application for a certificate if it determines that . . . the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location.” Conn. Gen. Stat. § 16-50p(b)(1)(iii). Ultimately, the Council’s task is to “balanc[e] the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize

damage to scenic, historic, and recreational values,” while “assur[ing] the welfare and protection of the people of the state.” Conn. Gen. Stat. § 16-50g.

B. Similar Decisional Precedents

This is not a run-of-the-mill Application for wireless tower approval. The unique factual characteristics of this matter include the following: (1) there no present coverage gap; (2) an Existing Facility will adequately serve the coverage area for the foreseeable future; (3) the Applicant proposes to build on a split-zoned parcel; (4) the parcel is only 2.44 acres in size; (5) the Applicant proposes to build either in a residential zone (“Proposed Site”) or, alternately, a mere 12 feet 6 inches over the border into the commercially-zoned portion of the same parcel (“Shifted Site”); and (6) there are ten houses within 452 feet of the Proposed Tower, including a house only 170 feet away – and even at the Shifted Site, the tower would be less than 500 feet from ten houses and only 275 feet from the nearest house. Furthermore, this case presents unique procedural characteristics insofar as (a) the Applicant did not consult with the municipality in good faith as required by General Statutes § 16-50l(f), and (b) the Applicant’s lackluster investigation of available sites has deprived the Council of a thorough, reliable record on which to determine whether more suitable locations are available.

Fortunately, the Council has had occasion to address similar circumstances in the context of prior applications for permission to build telecommunications towers. These included cases where the Council had reason to believe that there might be other available locations that would avert the problem of constructing a tower in close proximity to a residential neighborhood. In

such instances, the Council has concluded that the legal balancing standard militates in favor of deeper investigation, and has denied the applications, often without prejudice.⁸

1. Farmington Opinion (Docket No. 454)

In 2015, the Council denied an application without prejudice because the record was inadequately developed both with respect to public need and best available locations options. Opinion, Siting Council Dkt. No. 454 (199 Brickyard Road, Farmington) (June 11, 2015) (“Farmington Opinion”). There, the Council determined that the proposed location and tower structure – which produced adverse visual impacts – were designed as much for the carrier’s primary intention to use the tower for climber training as for providing wireless coverage. *Id.* The Council also noted that, although the 2.5 acre parcel was zoned industrial, there were “recreational and residential” uses “within a quarter mile of the tower site” *Id.* Given the nearby uses, the Council admonished the carrier for not conducting a better site search, stating:

[I]n the case at hand [the carrier] did not perform an exhaustive search specific to its needs. For instance, it did not examine several other industrially-zoned parcels are located south of the proposed site that may be more suitable for a telecommunications tower.”

Id. Furthermore, the Council took issue with the alleged need where no coverage was actually needed in a substantial part of the service area “[n]ow and for the foreseeable future” *Id.* On this record, including “the need not having been established in evidence,” the Council found that it lacked sufficient information to balance the public need against the adverse effects and denied the application without prejudice. *Id.*

⁸ At one point the Hearing, the Council’s inquiry was framed as “where a tower can go up today.” (Hrg. Tr. 241:3-6.) Respectfully, these precedents demonstrate that the Council’s authority and options are not so limited, especially where material information on other locations is not fully developed. And because the Existing Facility will provide adequate coverage for the foreseeable future, there is time to get this right.

The Farmington Opinion has key similarities to the present case. The parcel size there (2.5 acres) was similar to that here (2.44 acres). There, as here, the proposed location was driven more by a party’s tangential business interests than maximizing the public welfare. In that case, the carrier’s “primary” siting motivation was obtaining a tower on which it could train climbers, rather than optimizing the balance between coverage and adverse effects. In the present case, the Applicant’s primary motivation has been making use of the Proposed Site, which it controls, to the exclusion of other potential sites where the Applicant is not certain to obtain the work. In both cases, the parties supporting the application have not performed an “exhaustive search” that would allow the Council to weigh whether it is really necessary to approve a tower so close to residential uses. Finally, and perhaps the most important similarity, the Council in the Farmington Opinion found that there was no existing coverage need “now and for the foreseeable future” in a substantial portion of the coverage area. Likewise, in this case, there is no existing need for the foreseeable future, which “undercuts” the claimed need, in the words of the Council. *Id.* The appropriate outcome, therefore, is denial of the Application without prejudice.

2. Hartland Opinion (Docket No. 408)

In another decision concerning public need, the Council declined to issue a certificate in 2011 where the applicant failed to “fully” establish public need, and there were countervailing adverse scenic impacts. Opinion, Siting Council Dkt. No. 408 (95 Balance Rock Road, Hartland) (Sept. 22, 2011) (“Hartland Opinion”). Regarding the evidence of public need, the Council found that, although the applicant had demonstrated coverage gaps (unlike the present case), the applicant had failed to demonstrate that proposed tower would substantially improve on the already existing coverage conditions. *Id.* The Council therefore found that “either

insufficient or conflicting evidence regarding claims that the proposed tower will satisfy either of the two particular coverage goals or the general goal of connectivity, that the proposed tower satisfies a public safety need, or that the proposed tower is needed for collocation.” *Id.* The Council was also “concerned about the potential degradation of the scenic quality of this location,” and potential impacts on an owl habitat. *Id.* Consequently, the Council concluded that, “on balance, the evidence presented is too limited to demonstrate that the proposed project will achieve [the carrier’s] coverage goals, or satisfy a need for public safety or collocation.” *Id.* In that case, the Council denied the application with prejudice.

Although the Hartland case is less similar to the present matter, one crucial similarity is the applicant’s failure to “fully establish a need for a tower in the proposed location.” *Id.* The circumstances are somewhat different in that, there, there was a gap that the proposal would not fill and, here, there is no gap for the proposal to fill. However, the principle is the same: the proposed tower will not resolve some inadequacy. Additionally, the record in the present case is similar insofar as there is “insufficient or conflicting evidence,” *id.*, in light of which the Council in the precedential decision prudently declined to leap to unsupported conclusions. The Hartland Opinion confirms that the applicant must carry its burden of proof, and that the Council will not accept the assertions of the applicant if they are unsupported by consistent, sufficient, and credible evidence – which is the case here as well. Finally, there is a relevant difference between the cases as well. In the Hartland Opinion the Council denied an application even though it found that the applicant “was thorough in its examination of potential properties in the area.” *Id.* Here, the Applicant’s investigation materially lacking, which militates even more strongly toward denial of the pending Application.

3. New Milford Opinion (Docket No. 347)

Similar to the Farmington Opinion in 2015, the Council saw fit in a 2008 matter to decline approval without prejudice so the applicant could look for a more suitable location farther from residences. In its May 22, 2008 Opinion in Docket No. 347 (700 Kent Road, New Milford) (“New Milford Opinion”), the Council “recognize[d] a need for a facility in this vicinity” but was concerned that the proposed tower would be “located in the middle of a village center surrounded by residences.” *Id.* Although the Council noted that the applicant had made “good-faith efforts . . . to explore numerous possible tower locations,” the Council denied the application without prejudice in order to obtain “a more thorough examination of other possible strategies” in order to knowledgeably select “the best available solution to meet [the carrier’s] coverage objectives effectively.” *Id.*

Notably, the record in the present case is even less favorable to the Applicant. Whereas in the New Milford Opinion the Council credited the applicant for scouting locations “in good faith,” the Applicant here has failed to conduct a good-faith investigation of other locations. Furthermore, in the New Milford matter, the Council was seriously concerned about “17 residences within 1,000 feet of the proposed facility,” with the nearest residence 225 feet away. *See* Findings of Fact, Siting Council Dkt. No. 347 (May 22, 2008). Here, there are ten houses within 452 feet of the Proposed Tower, including a house only 170 feet away – and even at the Shifted Site lately proposed by the Applicant, the tower would be less than 500 feet from ten houses and only 275 feet from the nearest house. Moreover, the parcel in that case (4.73 acres) was actually larger in size than the present case (4.22 acres), albeit slightly. Thus, the Council’s decision to deny without prejudice in the New Milford case, where the record was even more favorable to the applicant, militates even more strongly toward denial here.

4. North Branford Opinion (Docket No. 269)

Perhaps the most similar precedent in terms of visual impacts is the Council’s 2004 opinion regarding a proposed tower in a residential zone. Opinion, Siting Council Dkt. No. 269 (80 Old Post Road, North Branford) (Aug. 12, 2004) (“North Branford Opinion”). There, the Council found existing coverage gaps along several State roads and adjacent areas, and the proposed site was on a 5-acre parcel. *Id.* Nonetheless, the proposed location of the tower was “in close proximity to surrounding residents,” including 56 residences within a 1000-foot radius, the nearest of which were 240 feet, 498 feet, 504 feet, and 576 feet. *Id.* Given the visibility of the tower from approximately 40 houses year-round and an additional 30 to 35 houses seasonally, the Council concluded that “the visual impact of the proposed tower would be significantly greater than a typical tower facility, due to the large number of homes close to the proposed site,” and would outweigh the need for its existence. *Id.* The Council therefore denied the application without prejudice, and “encourage[d] the applicant to explore other alternative sites in the area, including renewed efforts to contact property owners who did not respond to the applicant’s initial contacts, and a concerted effort to find another site with less visual impact on residents.” *Id.*

The similarities between the North Branford Opinion and the present case are obvious with respect to proximity to residential homes and visual impacts seasonally and year-round. Notably, the houses in the present case are even closer than those in the North Branford matter. Moreover, in that case, there actually was an “existing” coverage need, *id.*, whereas here the Existing Facility is filling the coverage area for the foreseeable future. Finally, it is noteworthy that the Council in that case was not satisfied with the applicant’s reliance on unreturned letters, and “encouraged” the applicant to make “renewed efforts” to contact those property owners, as

well as a “concerted effort” to find another site that was less visually detrimental to the residential neighborhood. *Id.* Thus here, even more than in that case, denial without prejudice is the appropriate outcome.

C. Substantive Importance of the Municipal Consultation Requirement

Finally, the City would be remiss not to object to the Applicant’s refusals (a) to engage in good-faith consultation with the City as required by General Statutes § 16-50l(f)(1), and (b) to sincerely investigate and evaluate alternate sites identified by the City. This is not just an academic violation – it has had practical costs. By prioritizing its business interests over any other consideration, and refusing to explore a mutually beneficial solution, the Applicant has wasted the resources of all stakeholders and deprived the Council of material information.

An applicant’s obligation to consult in good faith with the municipality is codified at General Statutes § 16-50l(f). The rule requires an telecommunications-tower applicant to provide a copy of technical reports to the municipality with certain specified information (including a description of the site selection process) and to make good-faith efforts to meet with the chief elected official. *See Conn. Gen. Stat. § 16-50l(f)(1).* The statute also provides:

The municipality shall present the applicant with proposed alternative sites, which may include municipal parcels, for its consideration not later than thirty days after the initial consultation meeting. The applicant shall evaluate these alternate sites presented as part of the municipal consultation process and include the results of its evaluations in its application to the council. The applicant may present any such alternatives to the council in its application for formal consideration.

Conn. Gen. Stat. § 16-50l(f)(3) (emphasis added). It is a black-letter law that statutes must be interpreted in a way that gives effect to the intent of the legislature. The courts have repeatedly instructed that “the legislature did not intend to enact meaningless provisions.” *Citizens Against Overhead Power Line Const. v. Connecticut Siting Council*, 139 Conn. App. 565, 577 n.4 (2014).

In this case, the Applicant only paid lip service to the statute and did not fulfill its consultation obligations meaningfully or in good faith. For example, the Applicant promised that it would “consider[] any sites that the City of Milford may bring forward to us on or before October 27, 2020.” (*Ball Letter 10/8/20 at App. [ARX II-B-1] Ex. M.*) After the City provided a list of sites on October 27, the Applicant did not respond. After two months, the City requested an update, but was ignored. (*Knuff Email 12/30/20 at App. [ARX II-B-1] Ex. M.*) After another month had passed, the City again requested an update. (*Knuff Email 1/20/21 at App. [ARX II-B-1] Ex. M.*) The Applicant replied that it was “working on a response to your letter. We will get back to you.” (*Pires Email 1/20/21 at App. [ARX II-B-1] Ex. M.*) But there was no response until March 26, 2021, just four days before the Application was filed. (*Ball Ltr. 3/26/21 at App. [ARX II-B-1] Ex. M.*) In other words, the Applicant deliberately rebuffed the City’s repeated efforts to engage in a cooperative discussion.⁹

Moreover, as laid out in the Proposed Findings of Fact, the Applicant breached its statutory obligation to sincerely “evaluate these alternate sites” identified by the City prior to filing the Application. *See Conn. Gen. Stat. § 16-50l(f)(3).* Much of the purported investigation occurred only after the Application was filed and the City raised its objections (*see Municipal Comments 4/28/21*), and those late efforts were dubious clean-up efforts, at best. And in every instance, the investigations lacked sincerity and diligence. In particular, the Applicant’s

⁹ As for the Applicant’s suggestion that “cooperation” means that the City must broker a substitute deal for the Applicant (“have them call me”), this is deeply misguided for numerous reasons: (1) it is the Applicant’s burden to affirmatively make its case, and not objecting parties’ burden to generate some full-fledged competing application; (2) the Applicant’s competitive interests have zero weight in the Council’s balancing of the public interest; (3) demanding that the City must ensure a profitable outcome for the Applicant is not good-faith consultation; and (4) the opportunity to explore a mutually beneficial solution was available during the pre-Application phase, but the Applicant rebuffed the City’s numerous overtures.

categorical refusal to contact American Tower is astonishing,¹⁰ as is the Applicant’s failure to correct the Schick agent’s misapprehension of the community’s siting preferences. The paramount purpose of the statutes and regulations governing public utilities is to promote “the welfare and protection of the people of the state.” *See Conn. Gen. Stat. § 16-50g.* As a business electing to participate in this regulatory framework, the Applicant is obligated to help the Council find the best available solution for the public. *See Conn. Gen. Stat. §§ 16-50l, 16-50p.* However, in this case, the Applicant has prioritized its own interests over the public interest – and has hindered the Council’s ability to identify the best available solution for the public – by refusing to provide a full record on alternative solutions.

In summary, the Applicant’s unfortunate approach to this process – failing to consult in good faith with the City; failing to dial provided phone numbers; “investigating” other locations only after the Application was already filed and the City filed its objections; failing to investigate in good faith; attempting to change the site plan mid-hearing to a point 12 feet 6 inches across the zoning line; and providing documentary evidence late and only after repeated requests – is not dispositive on the merits, but it does undercut the weight and credibility of the Applicant’s assertions, and it has deprived the Council of the ability to make a fully-informed decision.¹¹

¹⁰ The fact that American Tower is a competitor is irrelevant. In order to adequately investigate, the Applicant was obligated to utilize the direct contact information that the City supplied. Moreover, it is not a foregone conclusion that American Tower would displace the Applicant on the project. Even in the occasionally bare-knuckle world of real-estate development, it is not unheard of for competitors to at least open a discussion about mutually-beneficial arrangements. In any event, the Council lacks material insight because the Applicant refused to reach out.

¹¹ Moreover, by enforcing the spirit of the municipal consultation requirement in this case, the Council can set a helpful precedent that will incentivize good-faith municipal consultation in future cases.

IV. CONCLUSION

In summary, the only conclusions that can be confidently drawn from the present record are (a) there is no exigent need for replacement coverage, and (b) there is good reason to believe that more suitable locations (not in close proximity to numerous single-family homes) are available that have not been fully explored. There is time for this process to be done right, which ought to include cooperative consultation with the City, genuine investigation of other locations, and a well-developed record on which the Council can make a fully-informed decision. Therefore, the City respectfully submits that the Application should be denied without prejudice, according to the Council's precedent in similar circumstances.

Respectfully submitted,

CITY OF MILFORD

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on August 26, 2021:

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**Appendix to City of Milford Post-Hearing Brief
(Unpublished Siting Council Opinions)**

- 1. Opinion, Siting Council Dkt. No. 454 (199 Brickyard Road, Farmington) (June 11, 2015)**
- 2. Opinion, Siting Council Dkt. No. 408 (95 Balance Rock Road, Hartland) (Sept. 22, 2011)**
- 3. Opinion, Siting Council Docket No. 347 (700 Kent Road, New Milford) (May 22, 2008)**
- 4. Opinion, Siting Council Dkt. No. 269 (80 Old Post Road, North Branford) (Aug. 12, 2004)**

DOCKET NO. 454 – Tower Holdings, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Farmington Tax Assessor Parcel ID Maps 25 and 26, Lots 3A and 3B, 199 Brickyard Road, Farmington, Connecticut. } } } Connecticut
Siting
Council

June 11, 2015

Opinion

On November 7, 2014, Tower Holdings, LLC, (Applicant) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility/tower training facility at 199 Brickyard Road in Farmington, Connecticut. The tower would be constructed by the Applicant for telecommunications use by New Cingular Wireless PCS LLC (AT&T), training purposes for Northeast Towers (NET), a tower construction company affiliated with the Applicant, and collocation by other entities that are non-jurisdictional to the Council. Parties to the proceeding are the Applicant and the Town of Farmington. The intervenor is AT&T.

The property on which the proposed facility would be located is owned by Farmington River Properties. The property comprises 2.5 acres and is zoned industrial. The property is developed with a commercial building and an associated equipment storage yard that serves as the headquarters of NET. Land use within a quarter-mile of the tower site includes earth extraction, industrial, recreational and residential.

The proposed tower site is located on the eastern portion of the parcel in an area used for equipment storage. The Applicant would construct a 180-foot self-supporting lattice tower at the site. The tower, triangular in shape, would taper as it rises. The distance from tower leg to tower leg would be 18 feet at the base, 8 feet at a tower height of 100 feet and 5 feet from 140 feet to 180 feet. An equipment compound would be constructed at the base of the tower to house the equipment of telecommunication providers.

AT&T is the only telecommunications carrier that would locate on the tower, as no other telecommunication carrier intervened in this matter. AT&T proposes to install 12 panel antennas on standoff arms at the 140-foot level of the tower. Non-jurisdictional entities that would locate on the tower include Dunning Sand and Gravel, which would locate a whip antenna at 160 feet for company communications; Marcus Communications, which would install a whip antenna at the 170-foot level to provide additional capacity to its radio system that serves various emergency, bus, and government entities; and WBMW Radio, which would install a radio antenna at 175 feet to expand its service area.

The Applicant designed the tower so that the upper 40 feet, from 140 feet to 180 feet, could be used for training purposes. The Applicant contends 40 feet of tower space would provide realistic simulations of climbing much taller lattice structures that NET primarily services. Tower training would feature the use of gin poles, narrow lattice poles that serve as tower cranes, to raise and lower lattice tower sections and dummy antennas. A lattice tower is proposed because most of NET's work is on lattice structures and there are no current towers in the eastern U.S. that are specific to tower training. Most importantly, gin poles can only be used on lattice towers. Gin poles used at the site would extend to a height no more than 199 feet above ground level, to maintain compliance with Federal Aviation Administration criteria for the marking of aviation hazards.

Trainees would practice scaling the tower and affixing various training antennas and lattice tower sections to the tower. Training would be limited to NET employees and would occur over four separate one-week periods during warm weather months.

During the proceeding, the Town expressed concerns regarding visibility of the proposed 180-foot lattice tower to the Highlands, a residential development a quarter-mile west of the site. The Council agrees that the tower's visual impact is primarily to the Highlands and the Winding Trails recreation area to the east. Areas to the north are mostly wooded and open areas to the south are on Dunning's property. The greatest visual impact would occur during leaf-off conditions, where it is estimated 100 residential properties, mostly within the Highlands, could have views of the tower. Indeed, some residences in the Highlands would have year-round views: these are the residences located at a higher elevation than the site and on the side of an east-facing hill where areas of little or no screening occur as the hill slopes down to Brickyard Road.

On account of its visibility concerns, the Town stated that if a tower were to be approved at the site a monopole should be constructed, as it would offer a reduced visual profile compared to a lattice structure. In response, the Applicant stated it would be willing to construct a lattice tower limited to a height of 140 feet. A tower at this lower height would still be able to provide for both gin pole/lattice tower training and telecommunications use by AT&T and other carriers. However, the Applicant further stated it would not be willing to build a monopole, as that type of structure, although not material could not be used for gin pole/lattice tower training.

By stating on the record that a monopole would not be constructed to meet telecommunications needs for telecommunication carriers, the Applicant implies the tower's primary purpose is for training, rather than for telecommunications use. This conclusion is supported by the fact that the Applicant originally introduced the 180-foot lattice tower design to the Town in March 2013 strictly as a training tower. The Applicant produced a visibility analysis of the tower without telecommunications carriers for the Town's use at a Planning and Zoning meeting scheduled for April 9, 2013. The Applicant withdrew from that meeting, however, for various reasons, the one most relevant for this proceeding being that the application had become complicated by AT&T's interest in locating on the tower, although at an undetermined height.

After that point, the Applicant proceeded by filing its application for a 180-foot lattice tower to the Council, proposing both training and telecommunications uses, which, it argued, were both under the Council's purview, either for telecommunications purposes or for contributing to public safety. The Applicant did offer use of the tower to the Town for locating emergency communication equipment on it, but the Town indicated they were not interested. Although the Council is sympathetic to the lack of proper training facilities for tower workers, the Council finds the training aspect of the proposed tower does not meet any defined public safety benefit under the Council's jurisdiction; thus, the Council does not find a need for a 180-foot lattice tower.

Moving on to the question of telecommunications use alone, the Council first noted that a lattice tower has no greater usefulness than a monopole in terms of providing telecommunications. Next, the Council examined information provided by AT&T as to its wireless service needs. AT&T was not the applicant in this proceeding, but it does have a history of site searches in the vicinity, and had previously looked at several sites where existing structures were located that could support telecommunications use, including a smokestack, a rooftop and a cupola. The Council finds, however, that in the case at hand AT&T did not perform an exhaustive search specific to its needs. For instance, it did not examine several other industrially-zoned parcels located south of the proposed site that may be more suitable for a telecommunications tower. Also, a 100-acre parcel owned by Dunning Sand and Gravel (Dunning) is located east of the proposed site, and although the Applicant stated the Dunning property was examined, no specific tower locations on this property were identified as being considered. The Council notes this parcel is farther away from the Highlands than the proposed site is.

The Council further considered AT&T's propagation modeling re the tower's height. It shows that with antennas located at a tower height of 140 feet some areas of the Highlands, specifically the Pinewood Drive area and Crestwood Road area, would not have improved service. Drive-testing demonstrates that an antenna height of 140 feet at the site would provide a mix of in-vehicle and in-building service to the east

centered along the Cambridge Crossing development rather than the robust in-building service that seemingly would be necessary for adequate service to a residential area, especially given current high data-use patterns. Drive-test data conducted with an antenna height of 170 feet indicates stronger in-building coverage to this residential area; nonetheless, AT&T stated 140 feet was acceptable. Their acquiescence to a maximum height of 140 feet furthers the Council's finding that the 180-foot tower was designed first and foremost to maintain 40 feet of height at the top of the tower for unencumbered tower training activities: in other words, the proposed height meets a training need, not a telecommunications need.

Additionally undercutting AT&T's claimed need for the proposed tower is the fact that RF mapping shows a large portion of in-building service covering a relatively undeveloped area consisting of the Dunning property, Winding Trails to the east of the Dunning property and a large woodland north of the site that extends to Old Farms Road in Avon. Now and for the foreseeable future, these are all places where in-building service would be unnecessary.

Although pursuant to Connecticut General Statutes § 16-50p, there shall be a presumption of public need for personal wireless services, the Council is limited to consideration of a specific need for any proposed facility to be used to provide such services to the public. The Council finds that AT&T's evidence of need for the proposed facility is not convincing. Indeed, the evidence suggests that AT&T's telecommunications needs may be better met by another site in the area. This possibility, however, was never fully explored during the current proceeding.

None of the non-jurisdictional entities that propose to locate on the tower intervened in this proceeding, and the information provided in the record was neither detailed nor thorough enough for the Council to evaluate any of their claimed needs. The Council particularly would have been interested in hearing more detail from Marcus Communications, as their network purportedly supports a variety of services, including emergency services. The Council is not sure how critical it would be for Marcus' network to include antennas installed on the proposed tower, given that Marcus would not have backup power there to serve their clients in the event of power outages, quite possibly the times when emergency services would be needed most.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, maintenance and operation of a telecommunications/training facility at the proposed site, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not possible to weigh when compared to need, whether by the need being outside the Council's jurisdiction, or the need not having been established in evidence, and, as such, cannot be determined to be in harmony with policies of the State concerning such effects, thus presenting cause to deny this application. Therefore, the Council will deny this application without prejudice and will not issue a Certificate for the construction, maintenance, and operation of a telecommunications facility at 199 Brickyard Road, Farmington, Connecticut.

DOCKET NO. 408 - New Cingular Wireless PCS, LLC } Connecticut
application for a Certificate of Environmental Compatibility and }
Public Need for the construction, maintenance and operation of a } Siting
telecommunications facility located at 95 Balance Rock Road, }
Hartland, Connecticut. } Council

September 22, 2011

Opinion

On October 13, 2010, New Cingular Wireless PCS, LLC (AT&T) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility located at 95 Balance Rock Road in Hartland, Connecticut. The proposed facility would provide wireless service for AT&T to the northern portion of Hartland, including the Route 20 corridor and adjacent areas.

The property consists of a 12-acre, residentially zoned parcel owned by the Ring Mountain Hunt Club. The parcel is located in the northern portion of the East Hartland section of town. The property is improved with a wood-frame lodge, a shooting range, and associated parking areas, all of which are located in the southwest portion of the parcel. The remaining property is heavily wooded. The parcel abuts state forest to the north, east and west. Developed residential properties abut the site to the south, across Balance Rock Road.

AT&T is requesting a 190-foot monopole at one of the three proposed sites. AT&T initially proposed to locate a tower adjacent to the lodge, referred to as Site A. During the proceeding, two other locations were proposed in the forested, northeastern portion of the property, referred to as Site B and Site C. Site B is approximately 165 feet south and 170 feet west of Tunxis State Forest. Site C is approximately 150 feet northeast of Site B, close to the northeast corner of the property.

Access to Site A would be from the existing driveway extending from Balance Rock Road that services the shooting range and lodge. Access to Site B would be from a new, 475-foot gravel drive that would extend through forest from a new opening on Balance Rock Road. Access to Site C would be from a new gravel drive that would extend through the shooting range, then through 380 feet of forest.

Notwithstanding that the 1996 Telecommunications Act pre-empts the Council from determining the need for telecommunication facilities, the Act does not preempt states from determining whether a particular tower is needed in the location where proposed, and if needed, whether it should be sited at the proposed location. Not every tower that marginally decreases a coverage gap or improves service to a limited number of users must be approved. Against the magnitude of the need for a particular tower, namely the size of the coverage gaps, and the number of calls that are impeded, the Council must balance the adverse environmental impacts created by that tower.

AT&T requests a tower to meet two particular coverage goals: (1) to provide service along portions of Route 20 which has coverage gaps; and (2) to provide service along smaller roads with a few residences in the surrounding area. More generally, the proposed site aims to upgrade the network's future connectivity across the difficult terrain in this area of the State. AT&T also argues that the tower is necessary for public safety and collocation.

Coverage maps were offered by AT&T as evidence for claims that the proposed tower would fill gaps in service along Route 20 and certain smaller roads in the vicinity. The maps demonstrate that existing AT&T coverage in the area is unreliable and the gaps cannot be covered from existing structures. Concerning Route 20, the main challenge is serving this corridor as it traverses Hartland at the north end of the Barkhamsted Reservoir. This area is referred to as the “hollow” since it lies in a deep valley with high elevation ridges to the east and west. The coverage maps for all three proposed sites demonstrate that the coverage gap in the hollow would remain largely unfilled. As to coverage of the smaller roads, no facts were offered by AT&T to refute the intervenors’ evidence that these are mostly gated, serving state forest or protected watershed land not open to the public. As to in-building coverage, various types of maps in the record show that no significant number of commercial buildings or residences currently exist in this area or can be foreseen anytime in the future, due to the predominance of watershed properties and state forest, both of which are restricted from development by State statute.

The claim that this tower would upgrade network connectivity is not sufficiently supported. Connectivity would only be at issue for cellular frequencies, since LTE was not proposed for this tower, and PCS service is restricted by the Federal Communications Commission from transmitting north into Massachusetts; also, regardless of direction, PCS frequencies are more constrained by terrain than cellular ones. In regards to cellular connectivity to adjacent facilities, the proposed tower appears isolated. No coverage maps were provided to show connectivity with existing or planned facilities to the north, in Massachusetts. The various coverage maps in the record do not show connectivity between the proposed tower and existing or planned facilities in Connecticut to the west or east, which are over two miles away. The maps do imply connectivity with a planned facility to the south that would be needed to provide coverage along Route 179, but at the same time beg the question why that facility would not be more connective in any broad network design than the site proposed.

As to the public safety need, Town public safety officials did not request space on the proposed tower. Although a study has not yet been performed, the Town believes coverage in the hollow area for emergency communications can be met through the use of existing telecommunication sites. As to collocation, the record does not show other carriers have an interest in the proposed tower.

The Council has reviewed the record and concludes that AT&T has failed to fully establish the need for a tower in the proposed location. The Council finds either insufficient or conflicting evidence regarding claims that the proposed tower will satisfy either of the two particular coverage goals or the general goal of connectivity, that the proposed tower satisfies a public safety need, or that the proposed tower is needed for collocation.

The tower as proposed at any of the three sites would have limited adverse environmental impacts except for its intrusion on scenic and recreational values and the fragmentation of forested bird habitat. While some impacts, such as to wetlands, can be mitigated, the scenic and visual impacts, as well as loss of forested bird habitat, are significant and permanent.

The property is at the edge of an extensive forested area designated by the Connecticut Audubon Society as a key bird habitat. The site is within the range of the Saw-whet owl, a State species of special concern. The densely forested portion of the property contains suitable habitat to support foraging and nesting for the owl. Although no owls or nests were identified on the site property during owl surveys, the Council is concerned about the permanent loss and fragmentation of potential habitat for this sensitive species.

The Council considered the visibility impacts of all three sites, both from near view and far view. As to the near view, and with particular attention to the adjacent properties on Balance Rock Road, any of the three towers would be minimally visible, with only one or two acres of year-round visibility from surrounding areas. The Site B tower at a height of 160 feet would have the least adverse visual impact. It is not anticipated to be visible year-round from any of the residences on Balance Rock Road, whereas the upper portion of the Site A tower would be visible year-round from two residences. As for seasonal visibility, the upper 20 feet of the Site B tower would be visible from two residences. The upper 75 feet of the Site C tower would be seasonally visible from one residence and the upper 20 feet would be seasonally visible from a second residence.

Far and near views from scenic and recreational sites would not be possible to mitigate. Any of the three towers would be visible from an overlook along Route 20, approximately 1.4 miles northwest of the sites, although the 160-foot tower at Site B would be the least visually obtrusive. There would be seasonal visibility from spot locations along the Tunxis hiking trail, approximately 0.1 mile west of the site. Although there would be year-round visibility from the summit of Pine Mountain approximately three miles south of the site, views from this distance would have negligible impacts.

The Council is concerned about the potential degradation of the scenic quality of this location. The view from the vista along Route 20 over the Barkhamsted Reservoir is outstanding. The tower is also visible from other valuable recreational assets, such as portions of the Tunxis hiking trail, which is part of the statewide Blue-Blazed Trails system, as well as the regionally significant view from the summit of Pine Mountain. The Council has considered various “stealth” tower designs for this site and determined the mass of these structures would be out of scale with the surroundings, extending up to 95 feet above the tree-line for a 160-foot tower.

After considering all of the relevant concerns in this docket, pursuant to CGS § 16-50p(b)(1), the Council finds that the construction, maintenance, and operation of the proposed tower would substantially and adversely affect the scenic quality of its location and no public safety concerns require that the proposed facility be constructed in such a location. The Council acknowledges that AT&T was thorough in its examination of potential properties in the area, and acknowledges further that AT&T has mitigated wetland concerns at any of its proposed three sites to the greatest extent possible. Furthermore, on balance, the evidence presented is too limited to demonstrate that the proposed project will achieve AT&T’s coverage goals, or satisfy a need for public safety or collocation.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, maintenance and operation of a telecommunications facility at any of the three proposed sites, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are disproportionate either alone or cumulatively with other effects when compared to need, are in conflict with policies of the State concerning such effects, and are sufficient reason to deny this application with prejudice. Therefore, the Council will not issue a Certificate for the construction, maintenance, and operation of a monopole telecommunications facility at 95 Balance Rock Road in Hartland, Connecticut.

DOCKET NO. 347 - Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 700 Kent Road, New Milford, Connecticut. } Connecticut
} Siting
} Council

May 22, 2008

Opinion

On September 14, 2007, Cellco Partnership d/b/a Verizon Wireless (Cellco) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility to be located at 700 Kent Road in the Town of New Milford, Connecticut. Cellco is seeking to develop a facility on property owned by the Gaylordsville Volunteer Fire Department (GVFD) and used as its fire house. Cellco's objective in locating a facility at this location is to provide coverage and capacity relief along Route 7 and Route 55, as well as on local roads in the northwesterly portion of New Milford and the northerly portion of Sherman. The Town of New Milford's Zoning Commission, Theodore and Ellen Berson, James and Linda Hart, Reed Hotchkiss, Michael Covert, Carmen and Anthony Scuderi, Ilene Siegel Deutsch, Peter and Aline Flynn, Stephen and Barbara Dull, Henry and Elizabeth Marino, and Alisyn and Dan Hamilton participated as intervenors in this proceeding to demonstrate their opposition to this facility.

Cellco proposes to construct a 120-foot monopole within a 50-foot by 50-foot fenced compound on a 4.73-acre parcel owned by the GVFD. Underground utilities would be extended from existing service on South Kent Road. Vehicular access would extend from South Kent Road over a gravel driveway approximately 200 feet long. The tower would be designed to support four antenna placements and several whip antennas of the town's planned emergency services radio network.

The tower's setback radius would be contained within the GVFD property. It would, however, encompass the GVFD firehouse. Cellco could design a yield point into the tower to minimize any potential danger to the firehouse.

Cellco's proposed tower would be visible year-round from approximately 63 acres within a two-mile radius of its site. The tower would be seasonally visible from an additional 12 acres within this area. Approximately 14 residences would have year-round views of the proposed tower, and an additional eight residential properties would have seasonal views. The tower would be very visible to the homes in what is considered to be the center of the village of Gaylordsville. Cellco offered to camouflage the proposed tower as a pine tree in order to lessen its visual impact on the surrounding neighborhood. Cellco also proposed planting pine trees around the perimeter of the compound for the same reason.

The proposed tower would have no impact on wetlands as the nearest wetland or watercourse is the Housatonic River, which is 500 feet to the west.

Department of Environmental Protection (DEP) records indicate that the state endangered Northern Metalmark butterfly (*Calephelis borealis*) has been documented in the area of Cellco's proposed facility. However, a botanist, employed by Cellco and acting on a recommendation from the DEP, surveyed the vicinity where the proposed tower would be located and could not find any of the types of vegetation that would support this butterfly. The Council agrees that the proposed facility would not impact the Northern Metalmark butterfly.

Many of the residents who spoke at the public hearing on this docket expressed concern that the proposed tower would be visible from locations considered historic in Gaylordsville. The visibility analysis, however, indicates the tower would not be visible from any of the historic sites mentioned by the residents, including the Merwinsville Hotel. The State Historic Preservation Office concluded that Cellco's proposed facility would have no effect on Connecticut's historic, architectural, or archaeological heritage.

According to a methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997), the combined radio frequency power density levels of the antennas proposed to be installed on the tower have been calculated to amount to 11.52% of the FCC's Maximum Permissible Exposure, as measured at the base of the tower. This percentage is well below federal and state standards established for the frequencies used by wireless companies.

Cellco's proposed tower location was chosen after an extensive investigation of alternative sites. The terrain around Gaylordsville and in the northwestern area of New Milford makes it difficult to find suitable locations for towers that can provide coverage over a large enough area to make a facility feasible. Prior to proposing a new tower, wireless carriers typically seek to utilize existing structures such as church steeples or electric transmission poles that may be in the area of a site under consideration. In this case, unfortunately, the church located a short distance to the south of the GVFD firehouse already supports antennas belonging to Sprint and Nextel and has no room for Cellco's antennas. Furthermore, the two transmission lines that are proximate to Cellco's site are critical interfaces between New York's and Connecticut's electric grids. Installing the necessary replacement tower on one of these lines would require taking the lines out of service for a certain amount of time. The Council believes it to be unlikely that these particular circuits would be allowed to be out of service for the length of time necessary to install or service wireless antennas and ancillary equipment.

After investigating the alternative sites mentioned above, Cellco chose the proposed tower location at the GVFD firehouse. Although the Council generally supports locating wireless facilities on municipal properties such as firehouses, the site proposed by Cellco in this proceeding is located in the middle of a village center surrounded by residences. Gaylordsville is one of a number of such small villages along the Route 7 corridor that typify Connecticut's heritage. The Council feels that it is important to preserve the character of these villages to the greatest possible extent. A tower at this location, even one disguised as a tree, would be an obtrusive presence. While the Council recognizes the good-faith efforts Cellco made to explore numerous possible tower locations, it believes that there may be an available, alternative coverage solution that makes use of site/s with less cultural sensitivity.

After reviewing the record in this proceeding, the Council recognizes a need for a facility in this vicinity. Besides Cellco, at least four other wireless carriers are licensed to provide services in Litchfield County. The Council acknowledges that this region of the state lacks sufficient coverage. The Council also acknowledges that the terrain in this region makes finding acceptable sites particularly challenging. Consequently, the Council strongly encourages the wireless carriers serving this region to collaborate with each other, with municipal officials, and with any other parties having resources relevant to the region's telecommunications infrastructure, on developing strategies to provide the needed services. While the legislature has directed the Council to minimize proliferation of towers, the Council recognizes one potential strategy may be to include more but shorter towers. Other strategies possible could be to identify a wider range of municipal sites, to expand stealth options, or to design coverage with the maximum use of new wireless technologies.

In light of the above discussion, the Council is not convinced that the proposed site provides the best available solution to meet Cellco's coverage objectives effectively. Although a more thorough examination of other possible strategies may yet determine that the site proposed by Cellco in this proceeding is indeed the most prudent and feasible, the Council would prefer to base such a determination on a wider evaluation of available alternatives. Therefore, the Council will deny, without prejudice, a Certificate for the construction, operation, and maintenance of a 120-foot monopole telecommunications facility at the proposed site at 700 Kent Road, New Milford, Connecticut.

Connecticut Siting Council^(/CSC)

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DOCKET NO. 269 - Site Acquisitions, Inc. d/b/a Metro Tower application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a wireless telecommunications facility located at 80 Old Post Road, North Branford, Connecticut.

} Connecticut
} Siting
} Council

August 12, 2004

Opinion

On September 24, 2003, Site Acquisitions, Inc., d/b/a Metro Tower (Metro) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, operation, and maintenance of a wireless telecommunications facility at 80 Old Post Road in North Branford, Connecticut. The Old Post Road Stop the Tower Association and the Town of North Branford were parties in this proceeding. Senator William A. Aniskovich, Representative Robert M. Ward, and Ochenkowski Towers LLC were intervenors in the proceeding. AT&T Wireless PCS, LLC d/b/a AT&T Wireless, and Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless, LLC (Cingular) also intervened in the proceeding and expressed an interest to locate on the proposed facility. The purpose of the proposed facility is to provide wireless telecommunications service to existing gaps along Route 17, Route 150, and Route 22 and adjacent areas.

The proposed site is located within an approximately five acre parcel, which is located within a Residential (R-40) zone. Metro proposes to construct a 150-foot monopole designed to accommodate six carriers within a 60-foot by 100-foot equipment compound. Cingular would locate antennas at the 150-foot level of the proposed tower and AT&T Wireless would locate at the 140-foot level of the proposed tower. The top of the antennas would not exceed a height of 153 feet above ground level (agl).

While the proposed site would provide coverage to existing gaps along Route 17, Route 150, Route 22, and surrounding areas the proposed location of this tower is in close proximity to surrounding residents. There are 56 residences within a 1,000-foot radius of the proposed site, the nearest of which is the property owner's residence located 240 feet to the southeast. The nearest home to the west is 498 feet away, on Glenmeadow Road. The nearest home to the east is 504 feet away, located at 82 Old Post Road. The nearest home to the south is 576 feet away, located on Pistapaug Road.

A viewshed analysis was conducted for the proposed tower within a two mile radius study area. The proposed tower would be visible year-round from approximately 152 acres of the study area and from an additional 85 acres seasonally. Year-round visibility would be expected from portions of Old Post Road, Dayton Hill Road, Pistapaug Road, Woodhouse Avenue, Glenmeadow Drive, Totoket Road and Village Street. Seasonal visibility would be expected from Pistapaug Road, Woodhouse Avenue, Glenmeadow Drive, Totoket Road and Coach Drive. The proposed tower would be visible from approximately 40 houses year round and an additional 30 to 35 houses seasonally.

Based on this analysis, we find that the visual impact of the proposed tower would be significantly greater than a typical tower facility, due to the large number of homes close to the proposed site.

Although Metro has developed an adequate case for the need for a tower in the North Branford area, we find that the proposed tower's specific location at this particular site is inappropriate.

After considering all of the relevant concerns in this docket, we find that the visual impact that would result from the construction and operation of the proposed tower would outweigh the need for its existence. Consequently, due to the visual impact of the proposed tower on the surrounding neighbors, we will deny this site without prejudice. We encourage the applicant to explore other alternative sites in the area, including renewed efforts to contact property owners who did not respond to the applicant's initial contacts, and a concerted effort to find another site with less visual impact on residents.